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Federal Communications Commission  
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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of

The Use of N11 Codes and Other  
Abbreviated Dialing Arrangements

CC Docket No. 92-105

To: The Commission

**COMMENTS OF VANGUARD CELLULAR SYSTEMS, INC.**

Raymond G. Bender, Jr  
J.G. Harrington  
Christina H. Burrow

Its Attorneys

DOW LOHNES & ALBERTSON, PLLC  
1200 New Hampshire Avenue, N.W.  
Suite 800  
Washington, D.C. 20036  
(202) 776-2000

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## SUMMARY

Vanguard Cellular Systems, Inc., files these comments to address questions regarding the Commission's power to sell telephone numbering resources. The Commission does not have such power. Even if the Commission could sell telephone numbers, however, it would be bad public policy to do so.

There are several reasons why the Commission cannot sell telephone numbering resources. Telephone numbers do not belong to the government, but rather were developed outside the government and continue to be the product of private industry cooperation. Moreover, while Congress gave the Commission exclusive jurisdiction over numbering administration, it did not give the Commission the power to administer numbering itself or to sell telephone numbers. Even if the Commission otherwise would have the power to sell telephone numbers, selling numbers would violate the requirement that numbers must be available on an equitable basis.

Selling telephone numbers also is bad public policy. It is impossible for the sale of telephone numbers to be competitively neutral and there is no good way to sell telephone numbers. Auctions inherently would be biased towards certain bidders and set fees for numbering resources only rarely would reflect the true value of the resource being sold. Selling numbers also would be contrary to current trends in numbering administration that no longer tie numbers to individual carriers, but rather to the customer being served.

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**COMMENTS OF  
VANGUARD CELLULAR SYSTEMS, INC.**

Vanguard Cellular Systems, Inc. ("Vanguard"), by its attorneys, hereby submits its comments in the above-captioned proceeding.<sup>1</sup> Vanguard is a long-time provider of cellular service, and currently serves approximately 550,000 customers. Vanguard entered the cellular marketplace in 1984 and now is one of the 20 largest cellular carriers in the country. Vanguard's cellular systems serve 29 markets in the eastern half of the United States and cover a geographic area containing more than 7.8 million people.

As a growing cellular provider unaffiliated with any incumbent local exchange carrier, Vanguard will have an acute need for access to new numbering resources as its customer base expands. Access to numbering resources has been a key issue for the wireless industry for many years, and indeed the Commission has recognized that without the assignment of numbers, common carrier service is impossible.<sup>2</sup> Vanguard therefore files comments in this proceeding for

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<sup>1</sup>See *First Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 92-105, FCC 97-51 (released Feb. 19, 1997) (the "Notice").

<sup>2</sup>See *The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services* (Cellular Interconnection Proceeding), *Memorandum Opinion and Order on Reconsideration*, 4 FCC Rcd 2369 (1989) at ¶ 8. See also *The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, Declaratory*  
(continued...)

the sole purpose of explaining why the federal sale of telephone numbers is unlawful and undesirable.<sup>2</sup> While Vanguard does not address the sale of N11 numbers specifically, the sale of any numbering resource will harm competition and therefore is against the public interest.

**I.     THE COMMISSION HAS NO LEGAL BASIS FOR ATTEMPTING TO SELL TELEPHONE NUMBERS.**

In the *Notice* the Commission asked for comment on its statutory authority to sell the right to use N11 numbers or other abbreviated dialing arrangements.<sup>3</sup> As N11 numbers, and indeed all numbers, do not belong to the government, the Commission has no right to sell them. Further, the Commission's jurisdiction over numbering administration does not create an opportunity for government sale of numbers, and Congress in no way gave the Commission authority to auction numbers.

**A.     Numbers Do Not Belong to the U.S. Government.**

The North American Numbering Plan ("NANP") is the basic numbering scheme that permits interoperable telecommunications service within the United States, Canada, Bermuda and most of the Caribbean.<sup>4</sup> It evolved from a plan developed by AT&T in the 1940s that was intended to insure that the expansion of toll (or "long distance") dialing would be guided by "principles in harmony with the ultimate incorporation of all networks into an integrated network

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<sup>2</sup>(...continued)

*Ruling*, 2 FCC Rcd 2910 (1987).

<sup>3</sup>Consequently, these comments address only Section IV(C) of the *Notice*.

<sup>4</sup>*Notice* at 41

of nation-wide scope."<sup>5</sup> For over forty years AT&T administered the NANP. In 1984, at divestiture of the Bell Operating Companies from AT&T the Plan of Reorganization established Bellcore as the NANP Administrator. In 1993, Bellcore advised the Commission that it wished to relinquish this responsibility pending industry and/or regulatory resolution of the issue, and the Commission has adopted a model for administration of numbering in which the North American Numbering Council will make recommendations to the Commission, develop policy, initially resolve disputes and guide a neutral NANP Administrator.<sup>6</sup>

The NANP Administrator's primary function has been to assign numbers, pursuant to industry developed guidelines, to parties requesting them. It also has maintained numbering databases, initiated number conservation and reclamation efforts, advised industry and regulatory agencies on numbering issues and served as a subject matter expert on numbering issues (including providing consultation to the Commission and representing the United States in various international numbering committees). The Industry Numbering Committee and its workshops have also played an important role in numbering, particularly in developing numbering policy, establishing number assignment guidelines and resolving technical and operations issues related to numbering.

The current NANP is the work product of private industry. While burgeoning competition and historical incumbent local exchange carrier monopoly power over NXX codes and numbers have necessitated increased Commission intervention in numbering issues in recent

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<sup>5</sup>F.F. Shipley, Nation-Wide Dialing, Bell Laboratories Record, Oct. 1945 at 368.

<sup>6</sup>See Administration of the North American Numbering Plan, *Report and Order*, 11 FCC Red 2588 (1995).

years, the telecommunications industry, and not the government, established the numbering system. Vanguard therefore agrees that numbers are a public resource,<sup>7</sup> but, unlike spectrum, they are not government property because they are the creation of private parties. In the same manner that the government sold land to settlers in the last century the government is now selling spectrum. The government may not, however, sell numbers, because it has no right to sell something it did not create.<sup>8</sup>

**B.     The Commission's Jurisdiction Over Numbering Administration Does Not Create An Opportunity for the Government Sale of Numbers.**

Before the Telecommunications Act of 1996, the Commission did not have explicit jurisdiction over numbering issues, although the Commission's pre-existing authority to regulate common carriers also gave it the power to regulate numbering.<sup>9</sup> Section 251(e) of the Communications Act explicitly confers jurisdiction over numbering on the Commission, but in no way gives the Commission the power to sell numbers.

In giving the Commission authority over numbers and numbering issues, Congress established that "one or more impartial entities" shall administer telecommunications numbering.<sup>10</sup> Numbering administration is thus vested in a "neutral entity," not with the Commission. The Commission itself has no statutory authority to administer telecommunications numbering. Further, Congress has been extraordinarily clear in charging

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<sup>7</sup>Notice at 41.

<sup>8</sup>The sale of numbering resources by the U.S. government also would raise certain comity issues, given that the NANP is international in scope.

<sup>9</sup>See, e.g., Notice at 8 n.32. See also cases cited in note 2.

<sup>10</sup>47 U.S.C. § 251(e)(1).

the Commission to use auctions to allocate resources when it so intends.<sup>11</sup> No mention of auctioning numbers is made in Section 251(e), and Commission imposition of auctions would be at odds with Congress' directive that an impartial entity administer numbering and make numbers available on an equitable basis.

Moreover, while the Commission is permitted to establish a neutral basis for recovering the cost of establishing telecommunications numbering administration arrangements and number portability from telecommunications carriers, that power cannot be stretched to permit the sale of numbers.<sup>12</sup> Section 251(e)(2) covers only the funding of the cost of numbering administration, and cannot be construed to allow open-ended fundraising by the Commission. Further, as discussed below, selling telephone numbers is anything but competitively neutral, and therefore would be at odds with Section 251(e)'s requirement that numbers be available on an equitable basis. Consequently, the Commission cannot sell N11 numbers, NXX codes, abbreviated dialing arrangements or any other numbering resource under its current statutory authority.

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<sup>11</sup>See, e.g., Omnibus Consolidated Appropriations Act, 1997, P.L. 104-208, 110 Stat. 3009 (1996) at § 3001 (charging the Commission commence a spectrum auction for certain frequencies no later than April 15, 1997). Because Congress has been so exact in giving the Commission its auction authority, the Commission's general powers pursuant to Section 4(i) of the Communications Act in no way can be stretched to encompass auction authority Congress has not granted. See 47 U.S.C. § 154(i) ("The Commission may perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions.")

<sup>12</sup>47 U.S.C. § 251(e)(2).



**II.     SELLING TELEPHONE NUMBERS IS BAD PUBLIC POLICY.**

**A.     Selling Numbers Cannot Be Competitively Neutral.**

Selling numbers is certain to accomplish one thing: benefitting entities that already have numbers while hurting those that do not. This is true both for telecommunications providers and other consumers of numbers, especially businesses that need or want distinctive telephone numbers. If incumbent carriers are permitted to retain access to the numbers they currently control, they will have a huge advantage over other carriers, and if all carriers are forced to bid for numbers, the auction process might preclude all but the wealthiest (*i.e.* incumbent) applicants. Under either scenario small businesses, new market entrants and companies that are growing rapidly would be unable to obtain access to an input critical to the provision of telecommunications service. Indeed, concerns about the effect of excessive charges for numbering resources on the development of competition led the Commission to ban so-called "code opening fees" in the recent local competition proceeding.<sup>13</sup> Selling numbering resources would, if anything, have a greater competitive impact than the fees the Commission has banned.

**B.     There Is No Good Way to Sell Numbers.**

Unlike spectrum, which can be auctioned effectively, it is difficult to imagine an efficient way of selling telephone numbers. Both auctions and other methods of selling numbers would be inefficient and would create competitive imbalances.

First, it would be difficult to auction telephone numbers. Numbers, unlike spectrum, do not fall into natural groupings, and any attempt to cluster numbers together for competitive

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<sup>13</sup>Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, *Second Report and Order and Memorandum Opinion and Order*, CC Docket No. 96-98, *et al.*, FCC 96-333 (rel. Aug. 8, 1996) at ¶¶ 332-3.

bidding purposes will advantage some bidders and disadvantage others. Because there is no natural way to group numbers for auction, under any sort of auction, the cost of auctioning the numbers would likely be a very high percentage of the revenues generated.

Other methods of selling numbers have their own infirmities. If flat fees are imposed, for example, they would likely be too high for the vast majority of numbers, but too low for the numbers that actually are valuable. Efforts to create variable fees based on subjective determinations of the value of particular numbers would be cumbersome and subject to error. The chance that the Commission would choose a fee that would efficiently allocate numbers would be slim, and thus competition would be impeded.

**C.     Selling Numbers Is Contrary to the Current Trend Away From Carrier Control of Numbering Resources.**

The current trend is to assign numbers to *customers*, not *carriers*. The Telecommunications Act of 1996 mandates number portability,<sup>14</sup> and the Commission has long recognized the competitive impact of allowing customers to keep their numbers when they switch from carrier to carrier.<sup>15</sup> Forcing carriers to bid for numbers will tie the numbers to the carriers, and would create the very situation that Congress sought to avoid by mandating number portability. While N11 numbers presumably would be sold to customer/carriers, an auction or other sale still would act to freeze the otherwise dynamic telecommunications market. The Commission should make every effort to avoid setting a precedent by not auctioning numbering resources.

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<sup>14</sup>See 47 U.S.C. §§ 251(b)(2), 271(c)(2)(B)(xi).

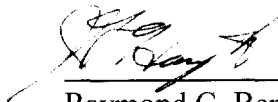
<sup>15</sup>See, e.g., Provision of Access for 800 Service, *Report and Order*, 4 FCC Rcd 2824, 2829 (1989) (800 number portability will "help promote competition in the 800 market").

**III. CONCLUSION.**

Auctioning numbers is contrary to public policy because it will decrease telecommunications competition. Further, the Commission has no legal authority to sell numbers, N11 or otherwise. Rather than making a short-sighted decision to raise funds via an N11 or other numbering sale, the Commission should make plain that it intends to promote a competitively neutral scheme of numbering administration that ensures that all entities can compete in the telecommunications marketplace on competitively neutral terms.

Respectfully submitted,

**VANGUARD CELLULAR SYSTEMS, INC**



\_\_\_\_\_  
Raymond G. Bender  
J.G. Harrington  
Christina H. Burrow

Its Attorneys

DOW, LOHNES & ALBERTSON, PLLC  
1200 New Hampshire Avenue, N.W.  
Suite 800  
Washington, D.C. 20036  
(202) 776-2000

March 31, 1997

## CERTIFICATE OF SERVICE

I, Tammi A. Foxwell, a secretary at the law firm of Dow, Lohnes & Albertson, PLLC, do hereby certify that on this 31st day of March, 1997, the foregoing "Comments" were sent via hand delivery to the following:

Janice Myles  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N.W., Room 544  
Washington, D.C. 20554

Gloria Shambley  
Common Carrier Bureau  
Network Services Division  
Federal Communications Commission  
2000 M Street, N.W., Room 235  
Washington, D.C. 20554  
(With diskette)

International Transcription Services, Inc.  
2100 M Street, N.W., Suite 140  
Washington, D.C. 20037

  
\_\_\_\_\_  
Tammi A. Foxwell